

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

YOLANDA FARRIS,
Petitioner.

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CHARGE NO.: 2008CN3842
EEOC NO.: 440-2008-03400
ALS NO.: 09-0467

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Yolanda Farris's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CN3842; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

- (1)** The Respondent's dismissal of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.

In support of which determination the Commission states the following findings of fact and reasons:

1. On February 27, 2008, the Petitioner filed a charge of discrimination with the Respondent, in which she alleged her employer, U.S. Airways ("Employer") sexually harassed her (Count A), subjected her to harassment because of her sex, female (Count B), and subjected her to harassment in retaliation for having opposed unlawful discrimination (Count C), in violation of Sections 2-102(A), 2-102(D), and 6-101(A) of the Illinois Human Rights Act (the "Act"). On July 21, 2009, the Respondent dismissed the charge for Lack of Jurisdiction. On August 24, 2009, the Petitioner filed a timely Request.
2. The Employer is an air carrier, and as such is regulated by the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978 ("FAA").
3. Section 41713(b)(1) of the FAA defines its preemptive effect over state laws relating to airline rates, routes and services:

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

“Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart.”

See 49 U.S.C. § 41713(b)(1)²

4. The Petitioner is employed as a Fleet Service Agent.
5. The Respondent determined that a prior Commission decision, Stratigos v. American Airlines, Inc., ___ Ill. HRC Rep. ___, (Charge No. 2007CF0334)(March 17, 2009), precluded the Respondent from investigating the Petitioner’s charge because in Stratigos it was held that the petitioner’s claim under the Act was preempted by the FAA.
6. In her Request, the Petitioner first argues that if the Respondent lacked jurisdiction over her charge, then the Respondent lacked the authority make a finding of preemption in the first instance.
7. Next, the Petitioner argues, assuming *arguendo* the Respondent had jurisdiction over the Petitioner’s charge, the Commission should vacate the dismissal because the Respondent improperly determined the scope of the FAA preemption. The Petitioner argues that Congress did not intend for the FAA preemption to bar an entire class of employees from bringing antidiscrimination lawsuits against their employers. Further, the Petitioner argues her claim under the Act does not directly relate to the Employer’s rates, routes or services.
8. The Petitioner cites various decisions in support of her position that Congress did not intend for the FAA to serve as an absolute bar to all state actions simply because the respondent or defendant was an airline carrier.
9. In Dan Morales v. Transworld Airlines, Inc., et al., 504 U.S. 374, 390 112 S.Ct. 2031, 2040 (1992), the Supreme Court stated that the effect of some state actions on airline rates, routes, and services may be ... “too tenuous, remote, or peripheral [in] manner...” to subject those state actions to preemption by the FAA. See also John Meyer v. United Airlines, 2009 WL 367762 (N.D. Ill. 2009).
10. In Meyer, which the Petitioner also cites in her Request, the court held an airline employee’s state common law retaliatory discharge claim was not preempted by the FAA because the employee’s desired outcome did not directly relate to United Airlines’ services, and the impact of the employee’s claim on United Airlines’ services was too remote and peripheral to invoke the preemptive effect of the FAA. See Meyer, at * 6.

² The Respondent’s response refers to 49 U.S.C. Section 1305(a)(1) as the relevant section. In 1994, the FAA preemption clause was renumbered by Congress from 49 U.S.C. § 1305(a) to 49 U.S.C. § 41713(b). See Revision of Title 49, Pub.L. No. 103-272, 108 Stat. 745, 1143 (1994). The language was also slightly modified, but there was no change in the substantive meaning of the preemption. See Chrissafis v. Continental Airlines, Inc., 940 F.Supp.1292, 1295, fn. 1 (N.D. Ill. 1996).

Conclusion

The Commission has determined that the Respondent's dismissal of the Petitioner's charge shall be vacated, and the charge shall be remanded to the Respondent for further investigation.

Notwithstanding the Stratigos decision, the authority cited by the Petitioner leads the Commission to conclude that, at minimum, the FAA does not pose an absolute bar to state civil rights claims simply because the respondent is an airline carrier. Given the allegations of the Petitioner, and the status of the authority interpreting the scope of the FAA preemption provision, it is arguable that the Petitioner's claim would not be preempted by the FAA. However, the Commission declines to determine, as a matter of law, the applicability and scope of the FAA preemption provision to the Petitioner's charge at the investigatory stage of this matter.

Rather, the Commission determines that the dismissal of the Petitioner's charge shall be vacated and remanded to the Respondent, which shall proceed with its investigation of the Petitioner's charge.

The Respondent shall first determine whether or not the Petitioner's charge meets the jurisdictional requirements of the Act as statutorily defined by the Act. If the Respondent determines the Petitioner's charge meets the jurisdictional requirements of the Act, the Respondent shall then proceed to investigate the substantive allegations of the charge, and make a determination in accordance with the Act.

If the Respondent determines that the Petitioner's charge does not meet the jurisdictional requirements of the Act, either in whole or in part, the Respondent shall state this finding and its reasons in support.

THEREFORE, IT IS HEREBY ORDERED THAT

- (1) The Respondent's dismissal of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.

This Order is not yet final and appealable.

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Entered this 26th day of May 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini